

## TITLE 26—INTERNAL REVENUE

CROSS REFERENCES: Bureau of Customs regulations, Department of the Treasury: See Title 19, Chapter I.

Food and Drug Administration, Federal Security Agency: See Title 21, Chapter I.

Immigration and Naturalization Service, Department of Justice: See Title 8, Chapter I.

Social Security Board, Federal Security Agency: See Title 20, Chapter III.

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### CHAPTER I—BUREAU OF INTERNAL REVENUE DEPARTMENT OF THE TREASURY

N. B.: Dates appearing in the citations of source of documents codified in this chapter, such as dates of issuance, approval, or effectiveness, are obtained from the original document. For general statutory provisions governing effective dates, validity, and constructive notice see section 7 of the Federal Register Act (49 Stat. 502; 44 U.S.C. 307) and sections 3 and 4 of the Administrative Procedure Act (60 Stat. 238; 5 U.S.C., Sup., 1002, 1003).

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ABBREVIATIONS: The following abbreviations are used in this chapter:

CFR	Code of Federal Regulations
Cum. Supp.	Cumulative Supplement, Code of Federal Regulations
E.O.	Executive order
E.P.C.	Excess Profits Council
F.R.	Federal Register
I.R.C.	Internal Revenue Code
I.T.	Income Tax
Sec.	Section
Stat.	Statutes at Large
Sup.	Supplement, United States Code
Supp.	Supplement, Code of Federal Regulations
T.D.	Treasury Decision
U.S.C.	United States Code

**Subchapter A—Income and Excess-Profits Taxes****PART 7—TAXATION PURSUANT TO TREATIES****Subpart—France**

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**Subpart—France**

**REGULATIONS EFFECTIVE JAN. 1, 1945  
[ADDED]**

**AUTHORITY:** §§ 7.410 to 7.426, inclusive, issued under sec. 62 I.R.C.; 53 Stat. 32, 59 Stat. 893; 26 U.S.C. 62. Tax convention between the United States and France proclaimed by the President of the United States on Jan. 5, 1945.

**SOURCE:** §§ 7.410 to 7.426, inclusive, contained in Treasury Decision 5499, Acting Commissioner of Internal Revenue, approved by the Acting Secretary of the Treasury, Feb. 27, 1946, effective Jan. 1, 1945, 11 F.R. 2154.

§ 7.410 *Introductory.* The tax convention and protocol between the United States and France (hereinafter referred to as the convention) proclaimed by the President of the United States on January 5, 1945, and effective January 1, 1945, provide in part as follows:

**TITLE I—DOUBLE TAXATION**

**ARTICLE 1**

The taxes referred to in this Convention are:

- (a) In the case of the United States of America: The federal income taxes, including surtaxes and excess-profits taxes;
- (b) In the case of France:
  - (1) The real estate tax;
  - (2) The industrial and commercial profits tax;
  - (3) The annual tax on undistributed profits;
  - (4) The agricultural profits tax;
  - (5) The tax on salaries, allowances and emoluments, wages, pensions and annuities;
  - (6) The professional profits tax;
  - (7) The tax on income from securities and movable capital;
  - (8) The general income tax.

**ARTICLE 2**

Income from real property, including income from agricultural undertakings, shall be taxable only in the State in which such real property is situated.

**ARTICLE 3**

An enterprise of one of the contracting States is not subject to taxation by the other contracting State in respect of its industrial and commercial profits except in respect of such profits allocable to its permanent establishment in the latter State.

No account shall be taken, in determining the tax in one of the contracting States, of the purchase of merchandise effected therein by an enterprise of the other State for the purpose of supplying establishments maintained by such enterprise in the latter State.

The competent authorities of the two contracting States may lay down rules by agreement for the apportionment of industrial and commercial profits.

The term "industrial and commercial profits" shall not include the following:

- (a) Income from real property;
- (b) Income from mortgages, from public funds, securities (including mortgage bonds), loans, deposits and current accounts;
- (c) Dividends and other income from shares in a corporation;
- (d) Rentals or royalties arising from leasing, personal property or from any interest in such property, including rentals or royalties for the use of, or for the privilege of using, patents, copyrights, secret processes and formulae, good-will, trade marks, trade brands, franchises and other like property;
- (e) Profit or loss from the sale or exchange of capital assets.

Subject to the provisions of this Convention the income referred to in paragraphs (a), (b), (c), (d) and (e) shall be taxed separately or together with industrial and commercial profits in accordance with the laws of the contracting States.

## ARTICLE 4

American enterprises having permanent establishments in France are required to submit to the French fiscal administration the same declarations and the same justifications, with respect to such establishments, as French enterprises.

The French fiscal administration has the right, within the provisions of its national legislation and subject to the measures of appeal provided in such legislation, to make such corrections in the declaration of profits realized in France as may be necessary to show the exact amount of such profits.

The same principle applies *mutatis mutandis* to French enterprises having permanent establishments in the United States.

## ARTICLE 5

When an American enterprise, by reason of its participation in the management or capital of a French enterprise, makes or imposes on the latter, in their commercial or financial relations, conditions different from those which would be made with a third enterprise, any profits which should normally have appeared in the balance sheet of the French enterprise, but which have been in this manner, diverted to the American enterprise, are, subject to the measures of appeal applicable in the case of the tax on industrial and commercial profits, incorporated in the taxable profits of the French enterprise.

The same principle applies *mutatis mutandis*, in the event that profits are diverted from an American enterprise to a French enterprise.

## ARTICLE 6

Income derived by navigation enterprises of one of the contracting States from the operation of ships documented under the laws of that State shall continue to benefit in the other State by the reciprocal tax exemptions accorded by the exchange of notes of June 11 and July 8, 1927 between the United States of America and France.

Income which an enterprise of one of the contracting States derives from the operation of aircraft registered in that State shall be exempt from taxation in the other State.

## ARTICLE 7

Royalties from real property or in respect of the operation of mines, quarries or other natural resources shall be taxable only in the contracting State in which such property, mines, quarries or other natural resources are situated.

Royalties derived from within one of the contracting States by a resident or by a corporation or other entity of the other contracting State as consideration for the right to use copyrights, patents, secret processes and formulae, trademarks and other analogous rights shall be exempt from taxation in the former State, provided such resident, corporation or other entity does not have a permanent establishment there.

## ARTICLE 8

Wages, salaries and similar compensation and pensions paid by one of the contract-

ing States or by a political subdivision thereof to individuals residing in the other State shall be exempt from taxation in the latter State.

Private pensions and life annuities derived from within one of the contracting States and paid to individuals residing in the other contracting State shall be exempt from taxation in the former State.

## ARTICLE 9

Income from labor or personal services shall be taxable only in the State in which the taxpayer carries on his personal activity.

This provision does not apply to the income referred to in Article 8.

## ARTICLE 10

Income from the exercise of a liberal profession shall be taxable only in the State in which the professional activity is exercised.

There is the exercise of a liberal profession in one of the two contracting States only when the professional activity has a fixed center in that country.

## ARTICLE 11

Gains derived in one of the contracting States from the sale or exchange of stocks, securities or commodities by a resident or a corporation or other entity of the other contracting State shall be exempt from taxation in the former State, provided such resident or corporation or other entity has no permanent establishment in the former State.

## ARTICLE 12

Students from one of the contracting States residing in the other contracting State exclusively for the purpose of study shall not be taxable by the latter State in respect of remittances received from within the former State for the purpose of their maintenance or studies.

## ARTICLE 13

In the calculation of taxes established in one of the contracting States on the use of property or increment of property of an enterprise of the other State, account shall be taken only of that portion of the capital situated or employed and allocable to a permanent establishment within the former State.

The foregoing provision shall apply to the French "patent" tax and the United States capital stock tax even though these two taxes have not been referred to in Article 1 of the present Convention.

In the application of the present Article navigation enterprises of one of the contracting States, enjoying in the other State the benefits of Article 6 of the present Convention, shall not be considered as having a permanent establishment in the latter State insofar as shipping activities are concerned.

## ARTICLE 14

It is agreed that double taxation shall be avoided in the following manner:

A. *As regards the United States of America.* Notwithstanding any other provision of this Convention, the United States of America in

determining the income and excess-profits taxes, including all surtaxes, of its citizens, or residents, or corporations, may include in the basis upon which such taxes are imposed, all items of income taxable under the Revenue Laws of the United States of America, as though this Convention had not come into effect. The United States of America shall, however, deduct from the taxes thus computed the amount of French income tax paid. This deduction shall be made in accordance with the benefits and limitations of Section 131 of the United States Internal Revenue Code relating to credit for foreign taxes.

**B. As regards France—(a) *Schedular taxes.*** Income from securities, debts and trusts having its source in the United States of America shall be subject in France to the tax on income from securities; but this tax shall be reduced by the amount of the tax already paid in the United States of America on the same income. In consideration of the fiscal regime to which the legislation of the United States of America subjects the income of nonresident aliens and foreign corporations or other entities, the deduction of the tax paid in the United States of America shall be effected in a lump sum through a reduction of 12 in the rate of the tax established by the French law.

The income other than that indicated in the preceding paragraph shall not be subject to any schedular tax in France when, according to this Convention, it is taxable in the United States of America.

**(b) *General tax on revenue.*** Notwithstanding any other provision of the present Convention, the general income tax can be determined according to all the elements of taxable income as imposed by French fiscal legislation.

However, the provisions of the first paragraph of Article 114 of the French Code on direct taxation relative to the taxation of aliens domiciled or resident in France shall continue to be applied.

#### ARTICLE 15

In derogation of Article 3 of the Decree of December 6, 1872, American corporations which maintain in France permanent establishments shall be liable to the tax on income from securities on three-fourths of the profits actually derived from such establishments, the industrial and commercial profits being determined in accordance with Articles 3 and 4 of this Convention.

The remaining one-fourth shall, in all cases, be taken as the basis of the annual tax on undistributed profits applicable to the same corporations.

#### ARTICLE 16

An American corporation shall not be subject to the obligations prescribed by Article 3 of the Decree of December 6, 1872, by reason of any participation in the management or in the capital of, or any other relations with, a French corporation. In such case, the tax on income from securities continues

to be levied, in conformity with French legislation, on the dividends, interest and all other distributions made by the French enterprise; but it is moreover collectible, if the occasion arises, and subject to the measures of appeal applicable in the case of the tax on income from securities, with respect to the profits which the American corporation derives from the French corporation under the conditions prescribed in Article 5.

#### ARTICLE 17

The American corporations subject to the provisions of Article 3 of the Decree of December 6, 1872 who were not placed under the special regime established by Articles 5 and 6 of the Convention for the avoidance of double income taxation between the United States of America and France, signed April 27, 1932, may, during a new period of six months from the date of the entry into force of the present Convention, exercise with reference to past years, the option provided in those two articles under the conditions which they prescribe.

Moreover, the American corporations contemplated in the third paragraph of Article 10 of the Convention of April 27, 1932, may be admitted to benefit from the provisions of that paragraph, when the tax has not yet been paid, if the latter was not found to be payable, prior to May 1, 1930, by a definitive judicial decision or if such decision has been the subject of an appeal in cassation.

#### ARTICLE 18

Any United States income tax liability remaining unpaid as at the effective date of this Convention for years beginning prior to January 1, 1936 of any individual resident of France (other than a citizen of the United States of America) or of a French corporation may be adjusted by the Commissioner of Internal Revenue of the United States of America, on the basis of the provisions of the United States Revenue Act of 1936. However, no adjustment will be made more than two years subsequent to the effective date of this Convention unless the taxpayer files a request with the Commissioner of Internal Revenue prior to such date.

#### ARTICLE 19

Notwithstanding any other provision of this Convention, in order to avoid double taxation on public servants, employees of one of the contracting States being citizens of that State and remunerated by it, who have been received by the other State to perform services in such State shall be exempt in their principal place of residence from direct and personal taxes whether national, state or local.

Such employees who own real property in the State in which they perform services shall not benefit from the above exemptions with respect to the taxes levied on such real property. Employees who engage in any private gainful occupation in such State shall not be entitled to any exemption under this Article.

## TITLE II—FISCAL ASSISTANCE

## ARTICLE 20

With a view to the more effective imposition of the taxes to which the present Convention relates, the contracting States undertake, on condition of reciprocity, to furnish information of a fiscal nature which the authorities of each State concerned have at their disposal, or are in a position to obtain under their own laws, that may be of use to the authorities of the other State in the assessment of the said taxes.

Such information shall be exchanged between the competent authorities of the contracting States in the ordinary course or on request.

## ARTICLE 21

In accordance with the preceding Article, the competent authorities of the United States of America will transmit to the competent authorities of France, as regards any person, corporation or other entity (other than a citizen, corporation or other entity of the United States of America) having an address in France and deriving from sources within the United States of America rents, dividends, interest, royalties, income from trusts, wages, salaries, pensions, annuities, or other fixed or determinable periodical income, the name and address of such person, corporation or other entity as well as the amount of such income.

The competent authorities of France will transmit to the competent authorities of the United States of America, as regards any person, corporation or other entity (other than a citizen, corporation or other entity of France) having an address in the United States of America and deriving from sources within France rents, dividends, interest, royalties, income from trusts, wages, salaries, pensions, annuities, or other fixed or determinable periodical income, the name and address of such person, corporation or other entity as well as the amount of such income.

The information relating to each year will be transmitted as soon as possible after December 31.

## ARTICLE 22

The competent authorities of each of the contracting States shall be entitled to obtain, through diplomatic channels, from the competent authorities of the other contracting State, except with respect to citizens, corporations or other entities of the State to which application is made, particulars in concrete cases necessary for the establishment of the taxes to which the present Convention relates.

However, the competent authorities of each State shall not be prevented from transmitting to the competent authorities of the other State information relating to their own nationals (citizens, corporations or other entities) if they deem it opportune for the prevention of fiscal evasion.

## ARTICLE 23

Each contracting State undertakes to lend assistance and support in the collection of the taxes to which the present Convention relates, together with interest, costs, and additions to the taxes and fines not being of a penal character according to the laws of the State requested, in the cases where the taxes are definitively due according to the laws of the State making the application.

In the case of an application for enforcement of taxes, revenue claims of each of the contracting States which have been finally determined shall be accepted for enforcement by the State to which application is made and collected in that State in accordance with the laws applicable to the enforcement and collection of its own taxes.

The application shall be accompanied by such documents as are required by the laws of the State making the application, to establish that the taxes have been finally determined.

If the revenue claim has not been finally determined, the State to which application is made may, at the request of the State making the application, take such measures of conservancy as are authorized by the laws of the former State for the enforcement of its own taxes.

The assistance provided for in this Article shall not be accorded with respect to the citizens, corporations or other entities of the State to which application is made.

## ARTICLE 24

In no case shall the provisions of Article 22 relating to particulars in concrete cases, or of Article 23 relating to mutual assistance in the collection of taxes, be construed so as to impose upon either of the contracting States the obligation to carry out administrative measures at variance with the regulations and practice of either contracting State, or to supply particulars which are not procurable under the law of the State to which application is made, or that of the State making application.

The State to which application is made for information or assistance shall comply as soon as possible with the request addressed to it. Nevertheless, such State may refuse to comply with the request for reasons of public policy or if compliance would involve violation of a business, industrial or trade secret. In such case it shall inform, as soon as possible, the State making the application.

## ARTICLE 25

Any taxpayer who shows proof that the action of the revenue authorities of the contracting States has resulted in double taxation in his case in respect of any of the taxes to which the present Convention relates, shall be entitled to lodge a claim with the State of which he is a citizen or, if the taxpayer is a corporation or other entity, with the State in which it is created or organized. Should the claim be upheld, the

competent authority of such State may come to an agreement with the competent authority of the other State with a view to equitable avoidance of the double taxation in question.

## ARTICLE 26

The competent authorities of the two contracting States may prescribe regulations necessary to interpret and carry out the provisions of this Convention. With respect to the provisions of this Convention relating to exchange of information and mutual assistance in the collection of taxes, such authorities may, by common agreement, prescribe rules concerning matters of procedure, forms of application and replies thereto, rates of conversion of currencies, transfer of sums collected, minimum amounts subject to collection, payment of costs of collection, and related matters.

## TITLE III—GENERAL PROVISIONS

## ARTICLE 27

The present Convention shall be ratified, in the case of the United States of America by the President, by and with the advice and consent of the Senate, and in the case of France, by the President of the French Republic with the consent of the Parliament.

This Convention shall become effective on the first day of January following the exchange of the instruments of ratification.

The Convention shall remain in force for a period of five years and indefinitely thereafter but may be terminated by either contracting State at the end of the five-year period or at any time thereafter, provided six months' prior notice of termination has been given, the termination to become effective on the first day of January following the expiration of the six-month period.

Upon the coming into effect of this Convention, the Convention for the avoidance of double income taxation between the United States of America and France, signed April 27, 1932 shall terminate.

Done at Paris, in duplicate, in the English and French languages, this 25th day of July, 1939.

[SEAL]  
[SEAL]

WILLIAM C. BULLITT  
GEORGES BONNET

## PROTOCOL

At the moment of signing the present Convention for the avoidance of double taxation and the establishment of rules of reciprocal administrative assistance in the case of income and other taxes, the undersigned Plenipotentiaries have agreed that the following provisions shall form an integral part of the Convention:

I. The present Convention is concluded with reference to American and French law in force on the day of its signature.

Accordingly, if these laws are appreciably modified the competent authorities of the two States will consult together.

II. The income from real property referred to in Article 2 of the present Convention shall include profits from the sale or exchange

of the said property, but shall not include interest on mortgages or obligations secured by the said property.

III. As used in this Convention:

(a) The term "permanent establishment" includes branches, mines and oil wells, plantations, factories, workshops, stores, purchasing and selling and other offices, agencies, warehouses, and other fixed places of business but does not include a subsidiary corporation.

When an enterprise of one of the contracting States carries on business in the other State through an employee or agent, established there, who has general authority to negotiate and conclude contracts or has a stock of merchandise from which he regularly fills orders which he receives, this enterprise shall be deemed to have a permanent establishment in the latter State. But the fact that an enterprise of one of the contracting States has business dealings in the other State through a bona fide commission agent or broker shall not be held to mean that such enterprise has a permanent establishment in the latter State.

Insurance enterprises shall be considered as having a permanent establishment in one of the States as soon as they receive premiums from or insure risks in the territory of that State.

(b) The term "enterprise" includes every form of undertaking whether carried on by an individual, partnership, corporation, or any other entity.

(c) The term "enterprise of one of the contracting States" means, as the case may be, "United States enterprise" or "French enterprise".

(d) The term "United States enterprise" means an enterprise carried on in the United States of America by a resident of the United States of America or by a United States corporation or other entity.

The term "United States corporation or other entity" means a partnership, corporation or other entity created or organized in the United States of America or under the law of the United States of America or of any State or Territory of the United States of America.

(e) The term "French enterprise" is defined in the same manner, *mutatis mutandis*, as the term "United States enterprise".

IV. The term "life annuities" referred to in Article 8 of this Convention means a stated sum payable periodically at stated times during life, or during a specified number of years to the person who has paid the premiums or a gross sum for such an obligation.

V. Citizens and corporations or other entities of one of the contracting States within the other contracting State shall not be subjected as regards the taxes referred to in the present Convention, to the payment of higher taxes than are imposed upon the citizens or corporations or other entities of such latter State.

VI. The provisions of the present Convention shall not be construed to restrict in any

manner any exemption, deduction, credit, allowance, or other advantage accorded by the laws of one of the contracting States in the determination of the tax imposed by such State.

VII. Documents and information contained therein, transmitted under the provisions of this Convention by one of the contracting States to the other contracting State shall not be published, revealed or disclosed to any person except to the extent permitted under the laws of the latter State with respect to similar documents or information.

VIII. As used in this Convention the terms "competent authority" or "competent authorities" means, in the case of the United States of America, the Secretary of the Treasury and in the case of France, the Minister of Finance.

IX. The term "United States of America" as used in this Convention in a geographic sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

X. The term "France", when used in a geographic sense, indicates continental France, exclusive of Algeria and the Colonies.

XI. Should any difficulty or doubt arise as to the interpretation or application of the present Convention, or its relationship to Conventions between one of the contracting States and any other State, the competent authorities of the contracting States may settle the question by mutual agreement.

Done in duplicate at Paris, this 25th day of July, 1939.

WILLIAM C. BULLITT.  
GEORGES BONNET.

§ 7.411 *Applicable provisions of the Internal Revenue Code.* The Internal Revenue Code provides in part as follows:

SEC. 22. GROSS INCOME. \* \* \*

(b) Exclusions from gross income. The following items shall not be included in gross income and shall be exempt from taxation under this chapter:

(7) Income exempt under treaty.—Income of any kind, to the extent required by any treaty obligation of the United States;

SEC. 62. RULES AND REGULATIONS.

The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this chapter.

Pursuant to section 62 of the Internal Revenue Code, Article 26 of the convention, and other provisions of the internal revenue laws, the following sections are hereby prescribed and all regulations inconsistent herewith are modified accordingly.

§ 7.412 *Scope of the convention.* The primary purposes of the convention are to avoid double taxation upon certain

classes of income, and to inaugurate fiscal cooperation between the two States with respect to reciprocal disclosure of information and to the collection of the taxes enumerated in Article 1 of the convention.

The specific classes of income from sources within the United States exempt under the convention from United States income taxes are:

(a) Industrial and commercial profits of a French enterprise having no permanent establishment in the United States (Article 3);

(b) Income derived by a French enterprise from the operation of ships documented under the laws of, or aircraft registered in, France (Article 6);

(c) Royalties derived by a nonresident alien who is a resident of France or by a French corporation or other French entity (having no permanent establishment within the United States), for the right to use copyrights, patents, secret processes and formulae, trademarks and other analogous rights (Article 7);

(d) Compensation and pensions paid by France or by a political subdivision of France to individuals (other than citizens of the United States) for services rendered to France whether within or without the United States (Article 8);

(e) Private pensions and life annuities derived from within the United States and paid to nonresident alien individuals (whether or not such individuals are citizens of France) residing in France during the year in which such amounts are paid (Article 8);

(f) Earned income of a doctor, lawyer, engineer, or other member of a liberal profession who is a nonresident alien individual and is a resident of France and does not maintain within the United States an office, establishment, installation, or other fixed center related to the practice of his profession within the United States (Article 10);

(g) Gains from sources within the United States arising from the sale or exchange of stocks, securities, or commodities by a resident of France (other than a citizen of the United States) or a French corporation or other French entity unless such resident, corporation, or other entity has, at any time during the taxable year in which such sale takes



place, a permanent establishment within the United States (Article 11).

Except as expressly provided by the convention, the tax liability of nonresident aliens who are residents of France or of French corporations or other French entities is determined in accordance with the provisions of the laws and of the regulations thereunder applicable generally to nonresident alien individuals and to foreign corporations.

The convention shall not be construed to affect the liability to United States income taxation of citizens of France who are resident in the United States except to the extent that such individuals are entitled to the benefits of Articles 8, 14 A, and 19 and to paragraph V of the protocol of the convention. The tax liability of a United States citizen or a resident of the United States, a member of a French partnership carrying on a French enterprise is not affected by Article 3 of the convention. Such citizen or resident is subject to United States income tax upon his distributive share of the net income of such partnership even though the other members of such partnership are not subject to tax upon their share of the partnership's industrial and commercial profits from sources within the United States where the enterprise has no permanent establishment within the United States. The convention shall not be construed to affect the liability to United States income taxation of citizens of the United States or residents of the United States who are not citizens of France.

The convention has no reference to rates of taxation imposed by the respective States but is concerned with the exempting of income arising in one of the contracting States when such income is derived from sources within such contracting State by a resident or corporation or other entity of the other contracting State and meets the conditions upon which such exemption depends as prescribed in the convention. This subpart is not concerned with the provisions of Articles 14B, 15, 16, and 17 of the convention since such articles affect only the allowance against the taxes imposed by France of income and excess profits taxes paid to the United States or the application of French revenue laws and decrees.

§ 7.413 *Definitions.* Any word or term used in this subpart which is defined in the convention shall be given the defi-

nition assigned to such word or term in such convention. Any word or term used in this subpart which is not defined in the convention but is defined in the Internal Revenue Code shall be given the definition contained therein.

As used in this subpart:

(a) The term "permanent establishment" includes branches, mines and oil wells, plantations, factories, workshops, stores, purchasing and selling and other offices, agencies, warehouses and other fixed places of business. A French parent corporation having a domestic or foreign subsidiary corporation in the United States shall not be deemed by reason of such fact to have a permanent establishment in the United States. The mere fact that a foreign subsidiary corporation of a French parent corporation has a permanent establishment in the United States does not mean that such French parent corporation has a permanent establishment in the United States. The fact that a French enterprise carries on business dealings in the United States through a bona fide commission agent or broker shall not be held to mean that such enterprise has a permanent establishment in the United States. If, however, a French enterprise carries on business in the United States through an employee or agent established there who has general authority to negotiate and conclude contracts or has a stock of merchandise from which he regularly fills orders, such enterprise shall be deemed to have a permanent establishment in the United States. Thus, if a French enterprise has a full time employee or full time agent who for such enterprise maintains in the United States a stock of merchandise from which orders are filled, such enterprise has a permanent establishment in the United States even though such employee or agent has no general authority to negotiate and conclude contracts on behalf of such enterprise. However, the mere fact that a commission agent or broker through whom a French enterprise carries on business in the United States maintains a small stock of goods in the United States from which occasional orders are filled shall not be construed as meaning that such enterprise has a permanent establishment in the United States. The mere fact that salesmen, employees of a French enterprise, promote the sale of its products in the United States does not mean that such enterprise has a

permanent establishment therein. However, a French insurance enterprise which insures risks within the United States or receives premiums from sources within the United States is deemed to have a permanent establishment within the United States.

(b) The term "enterprise" means any commercial or industrial undertaking, whether conducted by an individual, partnership, corporation, or other entity. It includes such activities as manufacturing, merchandising, mining, banking, and insurance. It does not include the operation of, or the trading in, real property located in the United States. It does not include the rendition of personal services. Hence, a nonresident alien individual who is a resident of France, rendering personal services within the United States is not, merely by reason of such services, engaged in an enterprise within the meaning of the convention, and his liability to United States income tax is unaffected by Article 3 of the Convention.

(c) The term "French enterprise" means an enterprise carried on in France by a nonresident alien individual resident of France or by a French corporation or other French entity. The term "corporation or other entity" means a partnership, corporation, or other entity created or organized in France or under the laws of France. For example, an enterprise carried on wholly outside France by a French corporation is not a French enterprise within the meaning of the convention. Whether a French entity is a corporation, a partnership, or a trust is to be determined in accordance with the principles of existing law relating to the taxation of nonresident aliens and foreign corporations.

(d) The term "industrial and commercial profits" means the profits arising from the industrial, mercantile, manufacturing, or like activities of a French enterprise as defined in this section. Such term does not include income from real property, interest, dividends, rentals and royalties, gains from the sale or exchange of capital assets, or compensation for labor or personal services. Such enumerated items of income are not governed by the provisions of Article 3 but, to the extent covered by the convention, are subject to the rules elsewhere set forth therein and in this subpart.

(e) The term "Secretary" means the Secretary of the Treasury and the term

"Minister" means the Minister of Finance of France.

§ 7.414 *Scope of convention with respect to determination of "industrial and commercial profits" of a nonresident alien individual resident of France, or of a French corporation or other entity carrying on a French enterprise in the United States—(a) General.* Article 3 of the convention adopts the principle that an enterprise of one of the contracting States shall not be taxable in the other contracting State in respect of its industrial and commercial profits unless it has a permanent establishment in the latter State. Hence, a French enterprise is subject to United States tax upon its industrial and commercial profits from sources within the United States only if it has a permanent establishment within the United States. From the standpoint of Federal income taxation, the article has application only to a French enterprise and to the industrial and commercial income thereof from sources within the United States. It has no application, for example, to compensation for labor or personal services performed in the United States, to income derived from real property located in the United States or any interest therein, including rentals and royalties, to gains from the sale or other disposition of such real property or interest, to dividends and interest, to rentals and royalties arising from leasing personal property or any interest in such property, including rentals and royalties for the use of patents, copyrights, secret processes and formulae, good will, trade marks, trade brands, franchises, and other like property, or to profits from the sale or exchange of capital assets. Such enumerated items of income, to the extent covered by the convention, are treated separately elsewhere in this subpart and are subject to the rules laid down in the sections having specific reference to the respective items of income.

(b) *No United States permanent establishment.* A nonresident alien individual who is a resident of France, or a French corporation or other French entity carrying on a French enterprise, but having no permanent establishment in the United States, is not subject to United States income tax upon industrial and commercial profits from sources within the United States. For example, if such French corporation sells stock in trade, such as wines or perfumery or cheese,

through a bona fide commission agent or broker in the United States, the resulting profit is, under the terms of Article 3 of the convention, exempt from United States income tax. Such French corporation, however, remains subject to tax upon all other items of income from sources within the United States which are not expressly exempted from such tax under the convention.

(c) *United States permanent establishment.* A nonresident alien individual who is a resident of France, or a French corporation or other entity, carrying on a French enterprise having a permanent establishment in the United States is subject to tax upon his or its industrial and commercial profits from sources within the United States. In the determination of the income of such resident of France or French corporation or other entity from sources within the United States, all industrial and commercial profits from such sources shall be deemed to be allocable to the permanent establishment within the United States. Hence, for example, if a French enterprise, having a permanent establishment in the United States, sells directly in the United States through a commission agent or broker therein goods produced in France, the resulting profits derived from United States sources from the latter transactions are allocable to such permanent establishment. The net income from sources within the United States, including the industrial and commercial profits, shall be determined in accordance with the provisions of section 119 of the Internal Revenue Code and the regulations thereunder. In determining industrial and commercial profits no account shall be taken of the mere purchase of merchandise effected in the United States by such French enterprise. A nonresident alien who is a resident of France, a member of a French partnership having a permanent establishment within the United States, shall by reason of such fact be deemed to have a permanent establishment within the United States.

§ 7.415 *Control of a domestic enterprise by a French enterprise.* Article 5 of the convention provides that if a French enterprise by reason of its control of a domestic business imposes conditions different from those which would result from normal business relations between independent enterprises, the accounts between the enterprises will be

adjusted so as to ascertain the true net income of the domestic enterprise. The purpose is to place the controlled domestic enterprise on a tax parity with an uncontrolled domestic enterprise by determining, according to the standard of an uncontrolled enterprise, the true net income from the property and business of the controlled enterprise. The convention contemplates that if the accounting records do not truly reflect the net income from the property and business of such domestic enterprise the Commissioner of Internal Revenue shall intervene and, by making such distributions, apportionments, or allocations as he may deem necessary of gross income or deductions of any item or element affecting net income as between such domestic enterprise and the French enterprise by which it is controlled or directed, determine the true net income of the domestic enterprise. The provisions of § 29.45-1 of this chapter (Regulation 111), shall, in so far as applicable, be followed in the determination of the net income of the domestic business.

§ 7.416 *Income from operation of ships or aircraft.* The income derived by a French enterprise from the operation of ships documented under the laws of France, or of aircraft registered in France, is under Article 6 of the convention exempt from United States income tax. However, the profits derived by such enterprise from the operation of ships or aircraft, if any, not so documented or registered are treated as are industrial and commercial profits generally. See Article 3 of the convention and § 7.414.

§ 7.417 *Income from real property, including mineral royalties.* Income of whatever nature derived by a nonresident alien individual who is a resident of France, or by a French corporation or other French entity from real property situated in the United States, including gains derived from the sale of such property and royalties in respect of the operation of mines, quarries, or other natural resources situated in the United States, is not exempted from taxation by the convention. The treatment of such income for taxation purposes is governed by those provisions of the Internal Revenue Code applicable generally to the taxation of nonresident aliens and foreign corporations.

§ 7.418 *Patent and copyright royalties.* Royalties derived from sources

within the United States by a nonresident alien individual who is a resident of France, or by a French corporation or other French entity, as consideration for the right to use copyrights, patents, secret processes and formulae, trademarks and other analogous rights, are exempt from Federal income tax under Article 7 of the convention, provided that such individual, corporation, or other entity has no permanent establishment within the United States at any time during the taxable year in which such income is so derived. Thus, a nonresident alien who is a resident of France, rendering personal services within the United States, is not subject to tax with respect to such royalties even though he is engaged in trade or business in the United States by reason of rendition of such services so long as he has no permanent establishment in the United States.

To obviate withholding of tax at the source, the nonresident alien individual resident of France or the corporation or other entity organized under the laws of France, as the case may be, shall notify by letter the person paying such income that the income is exempt from taxation under the provisions of the applicable convention and protocol. The letter of notification from an individual resident of France shall contain his address and a statement that he is a resident of France. The letter of notification from a corporation or other entity organized under the laws of France shall contain the address of its office or place of business and a statement that it is a corporation or other entity organized under the laws of France, shall be signed by an officer of such corporation or entity, and shall set forth his official title. In the case of royalties derived on or after January 1, 1945, the letter of notification shall also state that the individual resident of France, or corporation or other entity organized under the laws of France, as the case may be, does not have a permanent establishment in the United States and will not have such establishment in the United States at any time during the calendar year in which such royalties are paid. The recipient of the letter of notification shall immediately forward such letter or a copy thereof to the Commissioner of Internal Revenue, Withholding Returns Section, Washington 25, D. C.

**§ 7.419 Government wages, salaries, and similar compensation, pensions, and**

**life annuities.** Under Article 8 of the convention, wages, salaries, and similar compensation, and pensions paid by France, or by a political subdivision thereof, to individuals residing in the United States are exempt from Federal income tax. However, under the provisions of Article 14 A of the convention, such exemption shall not be construed as applying to recipients of such income who are citizens of the United States or alien residents who are not citizens of France.

Under the provisions of the same article of the convention private pensions and life annuities derived from sources within the United States by nonresident alien individuals who are residents of France are exempt from Federal income tax. Such items of income are therefore not subject to the withholding provisions of the Internal Revenue Code. See paragraph IV of the protocol to the convention as to what constitutes life annuities. See, also, § 7.418 with respect to patent and copyright royalties as to the requirements necessary to avoid withholding of the tax at the source, which requirements are also applicable for the purposes of this section.

**§ 7.420 Compensation for labor or personal services—(a) General.** In general and subject to the provisions of Article 8 and Article 10 of the convention and paragraph (b) of this section, compensation for labor or personal services derived from sources within the United States by a nonresident alien who is a resident of France, is subject to tax in accordance with the provisions of the Internal Revenue Code applicable generally to nonresident aliens. The provisions of Article 9 do not disturb either the provisions of section 119 (a) (3) of the Internal Revenue Code, relating to source of compensation for labor or personal services, or the provisions of the Internal Revenue Code relating to the taxation of such compensation in the hands of a nonresident individual who is a resident of France.

**(b) Professional earnings.** Article 10 of the convention provides a special rule of taxation with respect to professional fees constituting income derived from sources within the United States by a resident of France who is a nonresident alien. Under such rule, such nonresident alien rendering professional services, such as medical, legal, engineering, and scientific services, is not subject to

United States tax with respect to such compensation unless he has an office or other fixed place situated in the United States during the taxable year. Thus, such alien present in the United States during any part of the taxable year and rendering professional advice as a medical doctor or as a lawyer or as an engineer, is not subject to Federal income tax on fees derived by him in such taxable year by reason of such services unless he maintains at some time during such taxable year an office or other fixed place in the United States incident to the practice of his profession. The exemption applies regardless of the length of time spent within the United States during the taxable year and regardless of the amount of the fees or professional charges resulting to such alien from such services. As to when an alien is regarded as a resident of the United States and hence outside the scope of the exemption, see § 29.211-2 of this chapter (Regulations 111).

§ 7.421 *Stocks, securities, and commodities.* Under Article 11 of the convention, gains derived from the sale or exchange within the United States of stocks, securities, or commodities (if of a kind customarily dealt in on an organized commodity exchange) by a non-resident alien individual resident in France, or by a French corporation or other French entity, is exempt from Federal income tax unless such individual, corporation, or other entity has a permanent establishment in the United States. If, however, a permanent establishment is maintained in the United States, such gains are not so exempt even though the sales or exchanges resulting in such gains were carried on directly from the home office of the taxpayer and not through the permanent establishment in the United States. As to what constitutes a permanent establishment, see § 7.413.

§ 7.422 *Remittances to students.* Under Article 12 of the convention, nonresident alien individuals who are residents of France and who are temporarily residing in the United States for the purposes of studying or for acquiring business experience, are exempt from Federal income tax upon amounts representing remittances from France for the purposes of their maintenance and studies.

§ 7.423 *Credit against United States tax liability for income tax paid to*

*France.* For the purpose of avoidance of double taxation, Article 14 A of the convention provides that, on the part of the United States, there shall be allowed against the United States income and excess profits tax liabilities a credit for any income, war-profits, or excess profits taxes paid to France by United States citizens or domestic corporations. Such principle also applies in the case of a citizen of France residing in the United States. Such credit, however, is subject to the limitations provided in section 131 of the Internal Revenue Code (relating to the credit for foreign taxes) and section 729 of such Code (relating to laws applicable). See §§ 29.131-1 to 29.131-8, inclusive, of this chapter (Regulations 111) and §§ 35.729-1 to 35.729-3, inclusive, of this chapter (Regulations 112).

§ 7.424 *Adjustment of tax liability of residents of France and French corporations.* Article 18 of the convention confers upon the Commissioner authority to adjust under the Revenue Act of 1936 the tax liability for taxable years beginning prior to January 1, 1936, of non-resident alien residents of France, and French corporations, in any case in which such tax liability remained unpaid on January 1, 1945. Such provision, however, will not apply in any case unless:

(a) The Commissioner is satisfied that the additional income tax involved did not arise by reason of fraud with intent to evade the tax on the part of the taxpayer concerned; and

(b) The taxpayer files, prior to January 1, 1947, with the Commissioner a sworn statement showing for each year involved and for such other years as the Commissioner may require, (1) by items and classes of income the amounts of interest, dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical income, gains, profits, and income derived from sources within the United States; (2) the business transactions, if any, carried on in the United States by or in behalf of the taxpayer during each of such years; and (3) such further information as the Commissioner may require in the particular case.

§ 7.425 *Reciprocal administrative assistance—(a) General.* By Article 20 of the convention, the United States and

France adopt the principle of exchange of information for use in the determination and assessment of the taxes with which the convention is concerned. Pursuant to such principle, every United States withholding agent shall make and file with the collector, in duplicate, an information return on Form 1042C for the calendar year 1945 and each subsequent calendar year, in addition to withholding return Form 1042, with respect to dividends, interest, royalties, rents, salaries, wages, pensions, and annuities, or other fixed or determinable annual or periodical income paid to persons whose addresses are in France whether or not tax has been withheld with respect to such income. There shall be reported on Form 1042C not only such items of income listed on Form 1042, but also such items of interest listed on monthly returns, Form 1012, and there shall be shown on such return items of income paid to such addressees even though such items are exempt from tax under the convention, as, for example, certain royalties.

The information and correspondence relating to exchange of information may be transmitted direct by the Secretary to the Minister.

(b) *Information to be furnished in due course.* In accordance with the provisions of Article 21 of the convention, the Secretary shall forward to the Minister as soon as practicable after the close of the calendar year 1945 and of each calendar year thereafter during which the convention is in effect, the names and addresses of all persons whose addresses are within France and who derive from sources within the United States, dividends, interest, rents, royalties, salaries, wages, pensions, and annuities, or other fixed or determinable annual or periodical profits and income showing the amounts of such profits and income in the case of each addressee. For these purposes, the transmission to the Minister of information return, Form 1042C, as provided in paragraph (a) of this section for the calendar year 1945 and subsequent calendar years shall constitute a compliance with the provisions of Article 21 of the convention and of this subpart.

(c) *Information in specific cases.* Under the provisions of Article 22 of the convention, the Secretary shall furnish (if request therefor is made by the Min-

ister through diplomatic channels) to the Minister such information, relative to the tax liability to France of any person (other than a citizen of the United States or a United States domestic corporation or other United States domestic entity), as is available to, or may be obtained by, the Secretary under the revenue laws of the United States.

§ 7.426 *Reciprocal regulations.* Article 26 of the convention provides that the United States and France may prescribe (a) regulations for the purpose of carrying the convention into effect within the respective countries and (b) reciprocal rules relating to the exchange of information.

#### Subpart—United Kingdom, Taxable Years Beginning After December 31, 1944 [Added]

**AUTHORITY:** §§ 7.500 to 7.511, inclusive, issued under sec. 62, I.R.C.; 53 Stat. 32; 26 U.S.C. 62 and the tax convention between the United States and the United Kingdom, signed Apr. 16, 1945.

**SOURCE:** §§ 7.500 to 7.511, inclusive, contained in Treasury Decision 5532, Acting Commissioner of Internal Revenue, approved by Acting Secretary of the Treasury, Aug. 23, 1946, effective Jan. 1, 1945, 11 F.R. 9334.

§ 7.500 *Introductory.* The income tax convention between the United States and the United Kingdom of Great Britain and Northern Ireland, signed April 16, 1945, and effective (for the purposes of United States income and excess profits taxes) for taxable years beginning on or after January 1, 1945 (hereinafter referred to as the convention), provides in part as follows:

#### ARTICLE I

(1) The taxes which are the subject of the present Convention are:

(a) In the United States of America: The Federal income taxes, including surtaxes and excess profits taxes (hereinafter referred to as United States tax).

(b) In the United Kingdom of Great Britain and Northern Ireland: The income tax (including surtax), the excess profits tax and the national defense contribution (hereinafter referred to as United Kingdom tax).

(2) The present Convention shall also apply to any other taxes of a substantially similar character imposed by either Contracting Party subsequently to the date of signature of the present Convention or by the government of any territory to which the present Convention is extended under Article XXII

## ARTICLE II

(1) In the present Convention, unless the context otherwise requires:

(a) The term "United States" means the United States of America, and when used in a geographical sense means the States, the Territories of Alaska and of Hawaii, and the District of Columbia.

(b) The term "United Kingdom" means Great Britain and Northern Ireland, excluding the Channel Islands and the Isle of Man.

(c) The terms "territory of one of the Contracting Parties" and "territory of the other Contracting Party" mean the United States or the United Kingdom as the context requires.

(d) The term "United States corporation" means a corporation, association or other like entity created or organized in or under the laws of the United States.

(e) The term "United Kingdom corporation" means any kind of juridical person created under the laws of the United Kingdom.

(f) The terms "corporation of one Contracting Party" and "corporation of the other Contracting Party" means a United States corporation or a United Kingdom corporation as the context requires.

(g) The term "resident of the United Kingdom" means any person (other than a citizen of the United States or a United States corporation) who is resident in the United Kingdom for the purposes of United Kingdom tax and not resident in the United States for the purposes of United States tax. A corporation is to be regarded as resident in the United Kingdom if its business is managed and controlled in the United Kingdom.

(h) The term "resident of the United States" means any individual who is resident in the United States for the purposes of United States tax and not resident in the United Kingdom for the purposes of United Kingdom tax, and any United States corporation and any partnership created or organized in or under the laws of the United States, being a corporation or partnership which is not resident in the United Kingdom for the purposes of United Kingdom tax.

(i) The term "United Kingdom enterprise" means an industrial or commercial enterprise or undertaking carried on by a resident of the United Kingdom.

(j) The term "United States enterprise" means an industrial or commercial enterprise or undertaking carried on by a resident of the United States.

(k) The terms "enterprise of the Contracting Parties" mean a United States enterprise or a United Kingdom enterprise, as the context requires.

(1) The term "permanent establishment" when used with respect to an enterprise of one of the Contracting Parties means a branch, management, factory or other fixed place of business, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such

enterprise or has a stock of merchandise from which he regularly fills orders on its behalf. An enterprise of one of the Contracting Parties shall not be deemed to have a permanent establishment in the territory of the other Contracting Party merely because it carries on business dealings in the territory of such other Contracting Party through a bona fide commission agent, broker or custodian acting in the ordinary course of his business as such. The fact that an enterprise of one of the Contracting Parties maintains in the territory of the other Contracting Party a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute such fixed place of business a permanent establishment of such enterprise. The fact that a corporation of one Contracting Party has a subsidiary corporation which is a corporation of the other Contracting Party or which is engaged in trade or business in the territory of such other Contracting Party (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary corporation a permanent establishment of its parent corporation.

(2) For the purposes of Articles VI, VII, VIII, IX and XIV a resident of the United Kingdom shall not be deemed to be engaged in trade or business in the United States in any taxable year unless such resident has a permanent establishment situated therein in such taxable year. The same principle shall be applied, mutatis mutandis, by the United Kingdom in the case of a resident of the United States.

(3) In the application of the provisions of the present Convention by one of the Contracting Parties any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting Party relating to the taxes which are the subject of the present Convention.

## ARTICLE VI

(1) The rate of United States tax on dividends derived from a United States corporation by a resident of the United Kingdom who is subject to United Kingdom tax on such dividends and not engaged in trade or business in the United States shall not exceed 15 percent; *Provided*, That such rate of tax shall not exceed five percent if such resident is a corporation controlling, directly or indirectly, at least 95 percent of the entire voting power in the corporation paying the dividend, and not more than 25 percent of the gross income of such paying corporation is derived from interest and dividends, other than interest and dividends received from its own subsidiary corporations. Such reduction of the rate to five percent shall not apply if the relationship of the two corporations has been arranged or is maintained primarily with the intention of securing such reduced rate.

(2) Dividends derived from sources within the United Kingdom by an individual who

is (a) a resident of the United States, (b) subject to United States tax with respect to such dividends, and (c) not engaged in trade or business in the United Kingdom, shall be exempt from United Kingdom surtax.

(3) Either of the Contracting Parties may terminate this Article by giving written notice of termination to the other Contracting Party, through diplomatic channels, on or before the thirtieth day of June in any year after the year 1945, and in such event paragraph (1) hereof shall cease to be effective as to United States tax on and after the first day of January, and paragraph (2) hereof shall cease to be effective as to United Kingdom tax on and after the 6th day of April, in the year next following that in which such notice is given.

#### ARTICLE VII

(1) Interest (on bonds, securities, notes, debentures, or on any other form of indebtedness) derived from sources within the United States by a resident of the United Kingdom who is subject to United Kingdom tax on such interest and not engaged in trade or business in the United States, shall be exempt from United States tax; but such exemption shall not apply to such interest paid by a United States corporation to a corporation resident in the United Kingdom controlling, directly or indirectly, more than 50 percent of the entire voting power in the paying corporation.

(2) Interest (on bonds, securities, notes, debentures, or on any other form of indebtedness) derived from sources within the United Kingdom by a resident of the United States who is subject to United States tax on such interest and not engaged in trade or business in the United Kingdom, shall be exempt from United Kingdom tax; but such exemption shall not apply to such interest paid by a corporation resident in the United Kingdom to a United States corporation controlling, directly or indirectly, more than 50 percent of the entire voting power in the paying corporation.

#### ARTICLE VIII

(1) Royalties and other amounts paid as consideration for the use of, or for the privilege of using, copyrights, patents, designs, secret processes and formulae, trademarks, and other like property, and derived from sources within the United States by a resident of the United Kingdom who is subject to United Kingdom tax on such royalties or other amounts and not engaged in trade or business in the United States, shall be exempt from United States tax.

(2) Royalties and other amounts paid as consideration for the use of, or for the privilege of using, copyrights, patents, designs, secret processes and formulae, trademarks, and other like property, and derived from sources within the United Kingdom by a resident of the United States who is subject to United States tax on such royalties or other amounts and not engaged in trade

or business in the United Kingdom, shall be exempt from United Kingdom tax.

(3) For the purposes of this Article the term "royalties" shall be deemed to include rentals in respect of motion picture films.

#### ARTICLE IX

(1) The rate of United States tax on royalties in respect of the operation of mines or quarries or of other extraction of natural resources, and on rentals from real property or from an interest in such property, derived from sources within the United States by a resident of the United Kingdom who is subject to United Kingdom tax with respect to such royalties or rentals and not engaged in trade or business in the United States, shall not exceed 15 percent: *Provided*, That any such resident may elect for any taxable year to be subject to United States tax as if such resident were engaged in trade or business in the United States.

(2) Royalties in respect of the operation of mines or quarries or of other extraction of natural resources, and rentals from real property or from an interest in such property, derived from sources within the United Kingdom by an individual who is (a) a resident of the United States, (b) subject to United States tax with respect to such royalties and rentals, and (c) not engaged in trade or business in the United Kingdom, shall be exempt from United Kingdom surtax.

#### ARTICLE X

(1) Any salary, wage, similar remuneration, or pension, paid by the Government of the United States to an individual (other than a British subject who is not also a citizen of the United States) in respect of services rendered to the United States in the discharge of governmental functions, shall be exempt from United Kingdom tax.

(2) Any salary, wage, similar remuneration, or pension, paid by the Government of the United Kingdom to an individual (other than a citizen of the United States who is not also a British subject) in respect of services rendered to the United Kingdom in the discharge of governmental functions, shall be exempt from United States tax.

(3) The provisions of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the Contracting Parties for purposes of profit.

#### ARTICLE XII

(1) Any pension (other than a pension to which Article X applies), and any life annuity, derived from sources within the United States by an individual who is a resident of the United Kingdom shall be exempt from United States tax.

(2) Any pension (other than a pension to which Article X applies), and any life annuity, derived from sources within the United Kingdom by an individual who is



a resident of the United States shall be exempt from United Kingdom tax.

(3) The term "life annuity" means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in consideration of money paid.

#### ARTICLE XXIII

(1) The present Convention shall be ratified and the instruments of ratification shall be exchanged at Washington as soon as possible.

(2) Upon exchange of ratifications, the present Convention shall have effect

(a) as respects United States tax, for the taxable years beginning on or after the first day of January 1945;

(b) (i) as respects United Kingdom income tax, for the year of assessment beginning on the 6th day of April 1945 and subsequent years; (ii) as respects United Kingdom surtax, for the year of assessment beginning on the 6th day of April 1944 and subsequent years; and (iii) as respects United Kingdom excess profits tax and national defence contribution, for any chargeable accounting period beginning on or after the first day of April 1945 and for the unexpired portion of any chargeable accounting period current at that date.

#### ARTICLE XXIV

(1) The present Convention shall continue in effect indefinitely but either of the Contracting Parties may, on or before the 30th day of June in any year after the year 1946, give to the other Contracting Party, through diplomatic channels, notice of termination and, in such event, the present Convention shall cease to be effective

(a) as respects United States tax, for the taxable years beginning on or after the first day of January in the year next following that in which such notice is given;

(b) (i) as respects United Kingdom income tax, for any year of assessment beginning on or after the 6th day of April in the year next following that in which such notice is given; (ii) as respects United Kingdom surtax, for any year of assessment beginning on or after the 6th day of April in the year in which such notice is given; and (iii) as respects United Kingdom excess profits tax and national defence contribution, for any chargeable accounting period beginning on or after the first day of April in the year next following that in which such notice is given and for the unexpired portion of any chargeable accounting period current at that date.

(2) The termination of the present Convention or of any Article thereof shall not have the effect of reviving any treaty or arrangement abrogated by the present Convention or by treaties previously concluded between the Contracting Parties.

As used in this subpart, unless the context otherwise requires, the terms defined in the above articles of the convention shall have the meanings so assigned to them.

§ 7.501 *Dividends*—(a) *General*. The rate of tax imposed by section 211 (a) of the Internal Revenue Code (relating to nonresident alien individuals not engaged in trade or business within the United States) and by section 231 (a) of the Internal Revenue Code (relating to foreign corporations not engaged in trade or business within the United States) is 30 percent. Such rate in the case of dividends received in any taxable year beginning on or after January 1, 1945, from sources within the United States by (1) a nonresident alien (including a nonresident alien individual, fiduciary, and partnership) who is a resident of the United Kingdom or (2) a foreign corporation (whether or not organized under the laws of the United Kingdom) which is managed and controlled in the United Kingdom, is reduced to 15 percent under the provisions of Article VI of the convention if such alien or corporation:

(i) Is subject to United Kingdom tax on such dividends, and

(ii) At no time during the taxable year in which such dividend was so received was engaged in trade or business within the United States.

For the purposes of Articles VI, VII, VIII and IX of the convention, a nonresident alien or foreign corporation is not engaged in trade or business within the United States unless such alien or foreign corporation has a permanent establishment situated therein at some time in the taxable year. Thus, if a nonresident alien who is a resident of the United Kingdom, performs personal services within the United States during the calendar year 1945, has at no time during such year a permanent establishment within the United States, and is subject to United Kingdom tax with respect to a dividend derived by him from United States sources, he is entitled to the reduced rate of tax with respect to such dividend, as provided in Article VI of the convention even though by reason of his having rendered personal services within the United States he is engaged in trade or business therein in that year within the meaning of section 211 (b) of the Internal Revenue Code. The fact that the payee of the dividend is, owing

to the application of reliefs or exemptions under United Kingdom revenue laws, not required to pay United Kingdom tax on such dividend does not prevent the application of the reduction of the rate of United States tax with respect to such dividend. If the dividend would have been subject to United Kingdom tax had the payee thereof derived sufficiently large an income to require payment of tax, then liability to United Kingdom tax exists for the purposes of the reduction in the rate of United States tax. As to what constitutes a permanent establishment, see Article II (1) (i) of the convention.

In the case of dividends paid on or after January 1, 1945, by a corporation created under the laws of the United Kingdom no withholding of United States tax is required.

(b) *Dividends paid by a United States subsidiary corporation.* Under the proviso of Article VI (1) of the convention, dividends paid by a domestic corporation to a foreign corporation controlling, directly or indirectly, at the time the dividend is paid 95 percent or more of the voting power in such domestic corporation, are subject to tax at the rate of only 5 percent, if (1) not more than 25 percent of the gross income of the domestic corporation paying the dividend for the three-year period immediately preceding the taxable year in which the dividend is paid consists of dividends and interest (other than dividends and interest paid to such domestic corporation by its own subsidiary corporations, if any), and (2) the relationship between such domestic corporation and such foreign corporation has not been arranged or maintained primarily with the intention of securing such reduced rate of 5 percent.

Thus, for example, the X Corporation is a domestic corporation, 97 percent of the entire voting stock of which is controlled by the Y Company, Ltd., a foreign corporation managed and controlled in the United Kingdom, not having a permanent establishment in the United States at any time during the calendar year 1945, and subject to United Kingdom tax with respect to any dividends received by it or credited to its account in the United States. The X Corporation makes its income tax returns on the calendar year basis and throughout each of the years 1942, 1943, and 1944 derived not more than 25 percent of its gross income from interest and dividends from corpo-

rations other than its own subsidiary corporations. The relationship between the X Corporation and the Y Company, Ltd., is a relationship arranged and maintained without reference to the reduced rate of 5 percent on dividends provided in the proviso in Article VI (1) of the convention. A dividend was paid by the X Corporation to the Y Company, Ltd., on July 1, 1945. The reduced rate of tax of 5 percent is applicable to such dividend.

Any domestic corporation which claims or contemplates claiming that dividends paid or to be paid by it on or after January 1, 1945, are subject only to the 5 percent rate shall file, as soon as practicable, with the Commissioner of Internal Revenue, the following information: (1) The date and place of its organization; (2) the location of the management and control of the foreign corporation to which the dividend is paid or to be paid; (3) the number of outstanding shares of stock of the domestic corporation having voting power and the voting power thereof; (4) the person or persons beneficially owning such stock of the domestic corporation and their relationship to such foreign corporation; (5) the amount of gross income, by years, of the paying corporation for the three-year period immediately preceding the taxable year in which the dividend is paid; (6) the amount of interest and dividends, by years, included in the gross income of the domestic corporation and the amount of interest and dividends, by years, received by such corporation from its subsidiary corporations, if any; and (7) the relationship between the domestic corporation and the foreign corporation to which it pays the dividend.

As soon as practicable after such information is filed, the Commissioner of Internal Revenue will determine whether the dividends concerned fall within the scope of the proviso of Article VI (1) of the convention and may authorize the release of excess tax withheld with respect to dividends which come within such proviso. In any case in which the Commissioner of Internal Revenue has notified such domestic corporation that it comes within such proviso, the reduced rate of 5 percent applies to any dividends subsequently paid by such corporation to the foreign corporation unless the stock ownership of the domestic corporation, or the character of its income, or the

place of management and control of the corporation to which the dividend is paid, materially changes, and, if such change or changes occur, such corporation shall promptly notify the Commissioner of Internal Revenue of the then existing facts with respect to such stock ownership, income, and control.

(c) *Effect on withholding of address in United Kingdom.* For the purposes of withholding of the tax in the case of dividends, every nonresident alien (including a nonresident alien individual, fiduciary, or partnership) whose address is in the United Kingdom shall be deemed by United States withholding agents to be a resident of the United Kingdom and subject to United Kingdom tax and every corporation whose address is in the United Kingdom shall be deemed by such withholding agents to be a foreign corporation managed and controlled in the United Kingdom and subject to United Kingdom tax.

(d) *Rate of withholding.* On and after September 5, 1946 (ten days after the date on which this subpart was filed with the Division of the Federal Register), withholding in the case of dividends paid to nonresident aliens and foreign corporations, whose addresses are in the United Kingdom, shall (except (1) in any case in which, prior to the date of payment of such dividend, the Commissioner of Internal Revenue has notified the paying corporation that such dividend falls within the proviso of Article VI (1) of the convention, and (2) in any case in which the Commissioner notifies the withholding agent that the reduced rate shall not apply) be at the rate of 15 percent.

In the case of every dividend paid to a person whose address is in the United Kingdom, there shall be shown on the check or draft representing such dividend or on an accompanying statement, either in writing or stamped thereon by means of a rubber stamp or other suitable device, the rate of tax at which United States tax has been withheld from such dividend.

In any case in which a custodian account is maintained with a bank in the United States by a nonresident alien or foreign corporation whose address is in the United Kingdom and such alien or corporation notifies its custodian that the reduced rate of tax of 15 percent should not apply to dividends paid by such custodian with respect to such account, the

custodian shall withhold the tax at the rate of 30 percent with respect to such dividends at the source without regard to the reduced rate of withholding provided in this Treasury decision.

The preceding provisions relative to residents of the United Kingdom and to foreign corporations managed and controlled in the United Kingdom are based upon the assumption that the payee is the actual owner of the capital stock from which the dividend is derived and consequently is the person liable to the tax upon such dividend. As to action by the recipient who is not the owner of the dividend, see § 7.507.

§ 7.502 *Interest*—(a) *General.* Interest (other than interest falling within the scope of paragraph (b) of this section), whether on bonds, securities, notes, debentures, or any other form of indebtedness (including interest on obligations of the United States and on obligations of instrumentalities of the United States) received in any taxable year beginning on or after January 1, 1945, from sources within the United States by (1) a nonresident alien (including a nonresident alien individual, fiduciary, and partnership) who is a resident of the United Kingdom, or (2) a foreign corporation (whether or not organized under the laws of the United Kingdom) which is managed and controlled in the United Kingdom, is exempt from United States tax under the provisions of Article VII of the convention if such alien, or corporation:

(i) Is subject to United Kingdom tax on such interest, and

(ii) At no time during the taxable year in which such interest was so derived, had a permanent establishment situated within the United States.

Such interest is, therefore, not subject to the withholding provisions of the Internal Revenue Code.

To obviate withholding at the source in the case of coupon bond interest, the nonresident alien resident in the United Kingdom or the foreign corporation managed and controlled in the United Kingdom shall file, in duplicate, with each presentation of interest coupons for payment, Form 1001-UK. Such form shall be signed by the owner of the interest, trustee or agent, and shall show the name and address of the obligor, and the name and the address of the owner of such interest and the amount of such

interest. Such form shall contain a statement that the owner is a resident of the United Kingdom or is a foreign corporation managed and controlled in the United Kingdom, and that the owner has no permanent establishment in the United States and is chargeable to the United Kingdom tax with respect to the income.

The exemption from United States tax contemplated by Article VII of the convention, insofar as it concerns coupon bond interest, is an exemption applicable only to the owner of such interest. The person presenting such coupon or on whose behalf it is presented shall, for the purpose of the exemption, be deemed to be the owner of the interest only if he is, at the time the coupon is presented for payment, the owner of the bond from which the coupon has been detached. If the person presenting the coupon is not the owner of the bond, Form 1001, and not Form 1001-UK, shall be executed.

The original and duplicate ownership certificates, Form 1001-UK, must be forwarded to the Commissioner with the quarterly return, Form 1012, as provided in existing regulations with respect to Form 1001. See § 29.143-7 of this chapter (Regulations 111). Form 1001-UK need not be listed on Form 1012.

In the case of interest coupons presented in the United Kingdom by a non-resident alien or by a foreign corporation, not chargeable to United Kingdom tax in respect of such interest, ownership certificates, Form 1001, shall be filed as provided in existing regulations without reference to the provisions of the convention. See § 29.143-4 of this chapter (Regulations 111).

To obviate withholding at the source in the case of interest other than interest payable by means of coupons, the non-resident alien who is a resident of the United Kingdom, or the foreign corporation managed and controlled in the United Kingdom, shall file, in duplicate, with the withholding agent in the United States, Form 1001A-UK. Such form shall be signed by the owner of the income, trustee or agent, and shall show the name and address of the obligor and the name and the address of the owner of such interest. Such form shall contain a statement that the owner is a resident of the United Kingdom or is a foreign corporation managed and controlled in the United Kingdom, and that the owner has no permanent establishment in the

United States and is chargeable to United Kingdom tax with respect to such interest. The degree of liability to United Kingdom tax sufficient to entitle the owner of the interest (including coupon bond interest) to exemption from withholding is the same as that with respect to dividends. See § 7.501 (a).

Form 1001A-UK must be filed for each calendar year and should be so filed not later than a date 20 days preceding the date of the first payment of the income in such calendar year. If a taxpayer files such form for 1946 no additional Form 1001A-UK need be filed prior to the calendar year 1948.

The duplicate of Form 1001A-UK should be immediately forwarded by the withholding agent to the Commissioner of Internal Revenue, Records Division, Washington 25, D. C.

In the case of interest paid on or after January 1, 1945, by a corporation created under the laws of the United Kingdom no withholding of United States tax is required.

(b) *Exemption not applicable to interest paid by subsidiary corporation to its parent corporation.* Article VII (1) of the convention provides in part that the exemption from United States tax of interest paid to residents of the United Kingdom (as defined in Article II (1) (g) of the convention) shall not apply to interest paid by a domestic corporation to a foreign corporation managed and controlled in the United Kingdom if such foreign corporation controls, directly or indirectly, more than 50 percent of the voting power of all classes of stock of such domestic corporation. The exemption provisions of Article VII (1) of the convention have, therefore, no application to such interest. In any case in which (1) a foreign corporation managed and controlled in the United Kingdom derives interest from a domestic corporation and (2) the relationship existing between the foreign corporation and the domestic corporation is such as to render uncertain whether the exemption applies to such interest, neither Form 1001-UK nor Form 1001A-UK should be executed by the foreign corporation. In such case a statement of the facts should be filed with the Commissioner of Internal Revenue, Washington 25, D. C. As soon as practicable after such statement is filed the Commissioner of Internal Revenue will determine whether the interest involved is entitled to exemption under the

provisions of Article VII (1) of the convention, and will notify such foreign corporation whether the exemption provided in Article VII (1) of the convention applies in such case. If in such case the Commissioner of Internal Revenue determines that such exemption applies, then Form 1001A-UK should be filed together with a copy of the letter from the Commissioner of Internal Revenue.

§ 7.503 *Patent and copyright royalties and film rentals.* Royalties and other like amounts received in any taxable year beginning on or after January 1, 1945, from sources within the United States by (a) a nonresident alien (including a nonresident alien individual, fiduciary, and partnership) who is a resident of the United Kingdom or (b) a foreign corporation (whether or not organized under the laws of the United Kingdom) which is managed and controlled in the United Kingdom, as consideration for the use of, or for the privilege of using, copyrights, patents, designs, secret processes and formulae, trade-marks, and other like property, are exempt from United States tax under the provisions of Article VIII of the convention if such alien or corporation:

- (1) Is subject to United Kingdom tax on such royalties or other amounts, and
- (2) At no time during the taxable year in which such royalty or other amounts were so received had a permanent establishment within the United States.

Such items are, therefore, not subject to the withholding provisions of the Internal Revenue Code. For the purposes of Article VIII of the convention and of this section the terms "royalties" and "royalties and other like amounts" include rentals for the use of, or for the right to use, motion picture films. As to what constitutes a permanent establishment, see Article II (1) (1) of the convention.

To obviate withholding at the source, the nonresident alien who is a resident of the United Kingdom, or the foreign corporation managed and controlled in the United Kingdom, shall file, in duplicate, with the withholding agent in the United States Form 1001A-UK. Such form shall be signed by the owner of the income, trustee or agent, and shall show the name and address of the payor of the royalty or other like amount, and the name and the address of the owner of such income. Such form shall con-

tain a statement that the owner is a resident of the United Kingdom or is a foreign corporation managed and controlled in the United Kingdom, and that the owner has no permanent establishment in the United States and is chargeable to United Kingdom tax with respect to such income. The degree of liability to United Kingdom tax sufficient to entitle the payee of the income to exemption from withholding is the same as that with respect to dividends. See § 7.501 (a).

The duplicate copy of Form 1001A-UK should be immediately forwarded by the withholding agent to the Commissioner of Internal Revenue, Records Division, Washington 25, D. C.

§ 7.504 *Real property rentals and natural resource royalties.* The rate of tax imposed by section 211 (a) of the Internal Revenue Code (relating to nonresident alien individuals not engaged in trade or business within the United States) and by section 231 (a) of the Internal Revenue Code (relating to foreign corporations not engaged in trade or business within the United States) is 30 percent. Such rate in the case of real property rentals and royalties in respect of the operation of natural resources received on or after January 1, 1945, from sources within the United States by (a) a nonresident alien (including a nonresident alien individual, fiduciary, and partnership) who is a resident of the United Kingdom or (b) a foreign corporation (whether or not organized under the laws of the United Kingdom) which is managed and controlled in the United Kingdom, is reduced to 15 percent under the provisions of Article IX of the convention if such alien or corporation:

- (1) Is subject to United Kingdom tax on such royalties or other amounts, and
- (2) At no time during the taxable year in which such rental or royalty or other amount was so received, had a permanent establishment situated within the United States.

As to what constitutes a permanent establishment, see Article II (1) (1) of the convention.

In order to secure the benefit of the reduced rate of tax provided in Article IX of the convention at the time the real property rental or natural resource royalty is paid, the nonresident alien who is a resident of the United Kingdom, or the foreign corporation managed and con-

trolled in the United Kingdom, shall file, in duplicate, with the withholding agent in the United States Form 1001A-UK. Such form shall be signed by the owner of the income, trustee or agent, and shall show the name and address of the payor of the rental or royalty, and the name and the address of the owner of such income. Such form shall contain a statement that the owner is a resident of the United Kingdom or is a foreign corporation managed and controlled in the United Kingdom, and that the owner has no permanent establishment in the United States, and is chargeable to United Kingdom tax with respect to such income. As to the degree of liability to United Kingdom tax sufficient to entitle the owner of the income to the reduced rate of 15 percent, see § 7.501 (a).

The duplicate copy of Form 1001A-UK should be immediately forwarded by the withholding agent to the Commissioner of Internal Revenue, Records Division, Washington 25, D. C.

**§ 7.505 Pensions and life annuities.** Article XII of the convention provides in part that pensions (other than pensions paid by the United States) and life annuities derived on or after January 1, 1945 from sources within the United States by a nonresident alien individual who is a resident of the United Kingdom shall be exempt from United States tax.

The person paying such income should be notified by letter from the resident of the United Kingdom that the income is exempt from taxation under the provisions of the convention. Such letter shall contain the address of the individual. The letter of notification, or a copy thereof, should be immediately forwarded by the recipient to the Commissioner of Internal Revenue, Records Division, Washington 25, D. C. Such letter shall constitute authorization to the payor of the income to pay such income without deduction of the tax at the source unless the Commissioner subsequently notifies such payor that the tax should be withheld with respect to payments made after such notification.

**§ 7.506 Release of excess tax withheld at source—(a) General.** In order to bring the convention into force and effect at the earliest practicable date:

(1) The reduced rate of tax of 15 percent to be withheld at the source on dividends, natural resource royalties, and real property rentals, and

(2) Exemption from tax otherwise withheld at the source on interest, patent royalties, copyright royalties, film rentals and the like, are hereby made effective beginning January 1, 1946, in any case in which such dividends, natural resource royalties, real property rentals, interest, patent royalties, copyright royalties, film rentals, and the like are derived from sources within the United States by (i) a nonresident alien (including a nonresident alien individual, fiduciary, and partnership) who is a resident of the United Kingdom, or (ii) a foreign corporation (whether or not organized under the laws of the United Kingdom) which is managed and controlled in the United Kingdom.

Accordingly, in the case of every nonresident alien (including a nonresident alien individual, fiduciary, and partnership) whose address is in the United Kingdom, and every foreign corporation whose address is in the United Kingdom, where tax at the rate of 30 percent has been withheld on or after January 1, 1946, from dividends, there shall be released by the withholding agent and paid over to the person from whom it was withheld an amount equal to 15 percent of such dividend.

In the case of every such taxpayer who furnishes to the withholding agent Form 1001A-UK as prescribed in §§ 7.502, 7.503, or 7.504 where tax at the rate of 30 percent has been withheld on or after January 1, 1946, there shall be released by the withholding agent and paid over to the person from whom it was withheld an amount equal to (a) the amount so withheld in the case of interest (as to coupon bond interest, see next paragraph), patent royalties, copyright royalties, film rentals and the like, and (b) any amount so withheld in excess of 15 percent of the amount of natural resource royalties and real property rentals.

In the case of every such taxpayer described in the first paragraph of this paragraph who furnishes to the withholding agent Form 1001-UK, in duplicate, where tax at the rate of 28 or 30 percent, as the case may be, has been withheld on or after January 1, 1946, from coupon bond interest, there shall be released by the withholding agent and paid over to the person from whom it was withheld an amount equal to the tax withheld from such interest. Form 1001-UK used for this purpose should be

clearly marked "Substitute" in order to replace Forms 1001 previously filed. One Form 1001-UK, in duplicate, may be used to replace two or more Forms 1001. The form marked "Substitute" is to be used solely for the release of excess tax withheld in 1946. The use of Form 1001-UK for the purpose of exemption upon presentation of interest coupons is set forth in § 7.502 (a).

As to refund of excess tax withheld during the calendar year 1945, see § 7.511.

(b) *Pensions and life annuities.* In order to bring the convention into force and effect at the earliest practicable date the exemption from tax otherwise withheld at the source on pensions (other than pensions paid by the United States) and life annuities is made effective beginning January 1, 1946, in any case in which such pensions and life annuities are derived from sources within the United States by a nonresident alien individual who is a resident of the United Kingdom.

The person paying such income should be notified by letter from the resident of the United Kingdom that the income is exempt from taxation under the provisions of Article XII of the convention. See § 7.505. Such letter shall constitute authorization to the payor of the income to release the tax withheld on or after January 1, 1946 from such pensions and life annuities.

(c) *Subsidiary's dividends.* With respect to a dividend paid on or after January 1, 1945, by a domestic corporation to a foreign corporation whose address is in the United Kingdom, tax shall be withheld at the rate of 15 percent unless prior to the date of payment of such dividend the Commissioner of Internal Revenue has notified the paying corporation that such dividend falls within the scope of the proviso of Article VI (1) of the convention. As soon as practicable after information required under § 7.501 (b) is filed, the Commissioner of Internal Revenue will determine whether the dividend involved falls within the scope of such proviso and may authorize the release of the excess tax withheld with respect to dividends which come within the scope of such proviso.

§ 7.507 *Addressee not actual owner.* If the recipient in the United Kingdom of the dividend is a nominee or agent through whom the dividend flows to a person other than the person described in § 7.501 (a) as being entitled to the

reduced rate of tax of 15 percent provided in Article VI of the convention, such recipient in the United Kingdom will withhold an additional tax equivalent to 15 percent of the gross dividend prior to diminution by the 15 percent previously deducted in the United States.

The amounts so withheld by the withholding agent in the United Kingdom will, on or before the 15th day after the close of the calendar year quarter in which such withholding takes place, be deposited with the United Kingdom Board of Inland Revenue, without converting such amounts into dollars. Each withholding agent making such deposit will accompany such deposit with the appropriate British form executed as required by the Board of Inland Revenue. The Board of Inland Revenue have arranged that they will, on or before the end of the calendar month in which such deposit is so made with the Board, remit by draft in United States dollars the amounts so deposited, to the Collector of Internal Revenue, Baltimore, Maryland, U. S. A., together with the aggregate of any other amounts of United States tax withheld by the Board, forwarding with such draft the appropriate British form filed with the Board by the United Kingdom withholding agents.

Fiduciaries and partnerships with an address in the United Kingdom are accorded the benefit of the reduced rate of withholding with respect to dividends. If, however, the fiduciary or partnership is acting as a nominee or agent receiving the dividend for or on behalf of a person other than a person described in § 7.501 (a) as being entitled to the reduced rate of tax, an additional tax equal to 15 percent of the gross dividend prior to its diminution by the 15 percent deducted in the United States will be deducted by such fiduciary or partnership and treated as provided in the immediately preceding paragraph.

In any case in which the fiduciary or partnership receives a dividend from a United States domestic corporation, if a beneficiary of such fiduciary or a partner in such partnership is a nonresident alien not chargeable to United Kingdom tax with respect to the portion of such dividend included in such beneficiary's share of the distributable income of such fiduciary (if such fiduciary itself is not chargeable to United Kingdom tax on such dividend), or in the distributive share of such partner in such partner-

ship's income, as the case may be, the fiduciary or partnership will withhold an additional tax equal to 15 percent of the amount of such dividend so included.

§ 7.508 *Return of tax withheld and information return with respect to persons whose addresses are in the United Kingdom.* Every United States withholding agent shall make and file with the collector, in duplicate, an information return on Form 1042D, in addition to the withholding return, Form 1042, for the calendar year 1946 and each subsequent calendar year, with respect to: (a) dividends from which a tax of 15 percent was withheld from persons whose addresses are in the United Kingdom (5 percent in the case of dividends falling within the scope of the proviso of Article VI (1) of the convention); (b) real property rentals and natural resource royalties from which a tax of 15 percent was withheld from persons whose addresses are in the United Kingdom; (c) royalties and like amounts and interest (other than coupon bond interest reported on Form 1001-UK) from which no tax was withheld from persons who have furnished to the withholding agent Form 1001A-UK; and (d) all other fixed or determinable annual or periodical income paid to such persons.

§ 7.509 *Beneficiaries of a domestic estate or trust.* A nonresident alien who is a resident of the United Kingdom and who is a beneficiary of a domestic estate or trust, shall be entitled to the exemption, or reduction in the rate of tax, as the case may be, provided in Articles VI, VII, VIII, and IX of the convention with respect to dividends, interest, royalties, natural resource royalties, and rentals from real property to the extent such item or items are included in his distributive share of income of such estate or trust. In such case such beneficiary must, in order to be entitled to the exemption or reduction in the rate of tax, execute Form 1001A-UK and file such form with the fiduciary of such estate or trust in the United States.

§ 7.510 *Refund of excess tax withheld.* If the tax withheld at the source upon dividends, interest, royalties, natural resource royalties, real property rentals, pensions or life annuities paid during the calendar year 1945 is in excess of the tax due from the taxpayer under the convention, it will be necessary for the taxpayer, in order to compute the tax properly, to file an income tax return, Form

1040NB (United Kingdom), for individuals, and Form 1120NB (United Kingdom), for corporations, for such taxable year. The taxpayer's total fixed or determinable annual or periodical income from sources within the United States should be reported on such return and in the event securities are held in the name of a person other than the actual owner, the name of such person should be furnished. There shall be included in such return the following statements:

(a) That the taxpayer is a nonresident alien (including a nonresident alien individual, fiduciary, or partnership) resident in the United Kingdom or is a foreign corporation managed and controlled in the United Kingdom;

(b) That the taxpayer had a permanent establishment in the United States at no time during the taxable year in which the income was received;

(c) That the taxpayer is subject to United Kingdom income tax upon the income with respect to which the benefits of the convention are claimed.

However, the statements required by (b) and (c) are not applicable in the case of a taxpayer whose income from sources within the United States during the calendar year 1945 consisted exclusively of pensions or life annuities. As to additional information required in the case of a foreign corporation claiming a rate of 5 percent on dividends paid by its domestic subsidiary corporation, see § 7.501 (b).

For the purposes of refund of excess tax withheld resulting from the tax convention, a properly executed return on Form 1040NB (United Kingdom) or Form 1120NB (United Kingdom) shall constitute a claim for refund or credit within the meaning of section 322 of the Internal Revenue Code for the amount of the overpayment disclosed by such return. An amended return, so-called, shall not be considered a claim for refund or credit. Any tax paid in excess of that due from the owner of the income will be refunded by the United States Government as required by law.

§ 7.511 *Canadian withholding agents.* In the case of any dividend paid during 1946 or subsequent years to a recipient whose address is in Canada and who is a nominee, agent, or custodian through whom the dividend flows to a person whose address is in the United Kingdom, no withholding by such nominee or agent



is required Any tax so withheld with respect to dividends on or after January 1, 1946, may be released to such person by the withholding agent in Canada. In any case in which interest, rents, or royalties are paid during 1946 or subsequent years to such nominee, agent, or custodian through whom such income flows to a resident of the United Kingdom, no withholding by such nominee, agent, or custodian is required if Form 1001-UK or Form 1001A-UK, as the case may be, is filed by such person with such nominee, agent, or custodian, in the same manner as provided in §§ 7.502, 7.503, and 7.504. The duplicate of Form 1001A-UK should be transmitted (attached to Form 1042) by the Canadian nominee, agent, or custodian to the Collector of Internal Revenue, Baltimore, Maryland. Any tax so withheld with respect to interest, rents or royalties on or after January 1, 1946, paid to a resident of the United Kingdom who files Form 1001-UK or Form 1001A-UK, may be released to such person by the withholding agent in Canada.

The provisions of Treasury Decision 5157, approved June 27, 1942, are hereby amended to the extent that they are inconsistent with this section and as so amended are made applicable to payments of dividends, interest, rents, or royalties made by Canadian withholding agents on and after January 1, 1946.

#### PART 16—EXCESS-PROFITS ON ARMY CONTRACTS FOR AIRCRAFT [REINSTATED]

**CODIFICATION:** The repeal of the excess-profits tax by section 122 of the Revenue Act of 1945 (sec. 122, 59 Stat. 568; 26 U.S.C., Sup., note prec. 710), effective with respect to taxable years beginning after Dec. 31, 1945, brings into effect again the profit limiting provisions of the Vinson Act, as amended (sec. 3, 43 Stat. 505, as amended, 53 Stat. 560; 34 U.S.C. 496, 10 U.S.C. 311, 312), with respect to which Part 16 relates, making the part again applicable. Part 16 is therefore reinstated in this chapter.

#### REGULATIONS UNDER SECTION 14 OF THE ACT OF APRIL 3, 1939, AND OTHER PROVISIONS

- Sec.  
16.0 Introductory.  
16.1 Definitions.  
16.2 Contracts and subcontracts under which excess profit liability may be incurred.  
16.3 Contracts or subcontracts for scientific equipment.

- Sec.  
16.4 Completion of contract defined.  
16.5 Manner of determining liability.  
16.6 Computation of excess profit liability.  
16.7 Total contract price.  
16.8 Cost of performing a contract or sub-contract.  
16.9 Credit for net loss or for deficiency in profit in computing excess profit.  
16.10 Credit for Federal income taxes.  
16.11 Failure of contractor to require agreement by subcontractor.  
16.12 Evasion of excess profit.  
16.13 Books of account and records.  
16.14 Report to Secretary of War.  
16.15 Annual reports for income-taxable years.  
16.16 Payment of excess profit liability.  
16.17 Liability of surety.  
16.18 Determination of liability for excess profit, interest and penalties; assessment, collection, payment, refunds.

**AUTHORITY:** §§ 16.0 to 16.18, inclusive, issued under sec. 3, 48 Stat. 505, 49 Stat. 1926, 53 Stat. 560; 10 U.S.C. 311, 312, 34 U.S.C. 496.

**SOURCE:** §§ 16.0 to 16.18, inclusive, contained in Treasury Decision 4909, approved by the Acting Secretary of the Treasury June 16, 1939, and approved by the Acting Secretary of War June 28, 1939, 4 F.R. 2733.

§ 16.0 *Introductory.* (a) Section 14 of the act entitled "An Act to provide more effectively for the national defense by carrying out the recommendations of the President in his message of January 12, 1939, to the Congress," approved April 3, 1939 (53 Stat. 560; 10 U.S.C. 311, 312, 34 U.S.C. 496), provides:

SEC. 14. All the provisions of section 3 of the Act of March 27, 1934, as amended (48 Stat. 505; 49 Stat. 1926), and as amended by this section shall be applicable with respect to contracts for aircraft or any portion thereof for the Army to the same extent and in the same manner that such provisions are applicable with respect to contracts for aircraft, or any portion thereof for the Navy: *Provided*, That the Secretary of War shall exercise all functions under such section with respect to aircraft for the Army which are exercised by the Secretary of the Navy with respect to aircraft for the Navy: *Provided further*, That section 3b of the Act of March 27, 1934 (48 Stat. 505), as amended (49 Stat. 1926; 34 U.S.C. Supp. IV, 496), is hereby further amended by inserting in the first sentence after the words "in excess of 10 per centum of the total contract prices" the words "for the construction and/or manufacture of any complete naval vessel or portion thereof, and in excess of 12 per centum of the total contract prices for the construction and/or manufacture of any complete aircraft or portion thereof"; by inserting in the first proviso after the words "That if there is a net loss on all such contracts or subcon-